

Congress of the United States  
Washington, DC 20515

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February 16, 2016

Chairman Tom Wheeler  
Commissioner Mignon Clyburn  
Commissioner Jessica Rosenworcel  
Commissioner Ajit Pai  
Commissioner Michael O'Rielly

Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Dear Chairman Wheeler and Commissioners of the FCC,

We write to express our concerns with the Chairman's recent proposal on video devices and competition, which we understand the Commission will consider at its February 18, 2016, meeting. The proposal's potential implications on the marketplace for audio-visual content and copyrighted material lie squarely within Judiciary Committee's jurisdiction, and as current and former Members of the Committee, we plan to monitor its progress closely. We write today because we are concerned about the implications of this proposal for the nearly two million Americans who work to produce America's film and television content – particularly independent creators and those creating minority-focused and religious programming. Regulation in this space has the potential to upend ties between creators, channel providers, and cable companies – and jeopardize the rights of creators to negotiate directly with those selling their work to consumers.

The market for video and television programming is one of the most competitive and innovative sectors of the creative economy. Today's marketplace has undergone a rapid evolution to meet consumer demands and viewer preferences; viewers can subscribe to web-based streaming services like Netflix, Hulu, Amazon Video, Sling TV, and Sony Vue, as well as new streaming apps from individual programmers such as HBO Now, CBS All Access, and MLB Gameday. Consumers can also purchase a wide array of connected devices, including retail boxes like Roku, Apple TV, and Google Chromecast. With each new day, new technologies enter the marketplace, promoting competition and choice.

As Chairman Wheeler recently noted, “American consumers enjoy unprecedented choice in how they view entertainment, news and sports programming.” This innovation has fueled more high-quality, diverse, and creative content for viewers than anyone could have predicted just a decade ago. All of these legitimate services pay the creators and copyright owners who produce this content and have built their businesses around paying artists for their work.

We are concerned, however, that the Commissioner’s new proposal could undermine this creative ecosystem by enabling companies to make money distributing content without negotiating with creators – an approach that conflicts with the copyright law established by Congress and the very principles enshrined in Article I, Section 8, Clause 8 of the Constitution. Regulation in this space has the potential to drastically weaken the economics of the legitimate businesses that have fueled so much of the innovation and consumer choice that has taken place during the last decade.

We also write to express concern over the proposal’s potentially adverse impacts on independent, minority, and religious content creators. A proposal, for example, that would permit third parties to dismantle rigorously negotiated channel placement and advertising arrangements could disproportionately affect the smaller players in this marketplace. It could do so by leaving this programming out of new packages or relegating their channels to second-tier locations – with the ultimate effect of decreasing the value of their content to buyers and advertisers. As we are sure you agree, small and diverse voices are critical to the health and vitality of our media and culture – and FCC regulation should never be used to create additional hurdles to their success.

We respectfully request additional information about this proposal. Specifically:

1. How will the upcoming proceeding probe how to ensure that unlicensed copies of creative works are not promoted to viewers?
2. How will the proposal ensure that these new systems are free of malware or other cybersecurity risks?
3. How will you ensure that independent, minority-focused, and religious programming networks are not adversely impacted with regard to channel-positioning agreements?
4. How will the proposal ensure that third parties negotiate directly with content creators before they use the content for their own commercial purposes?
5. Will third parties be required to compensate content creators for any fees they collect for their new services? How will the advertising, for example, that third-parties might sell around content offerings flow back to rights holders and into the royalty-, pension- and benefit plans of the film and television workforce?

6. How will the NPRM probe how to extend consumer privacy and safety protections to third-party resellers? From the perspective of the individual television viewer, will the third party services be "seamless" and indistinguishable from an MVPD's services? What guarantees will consumers have that third-parties will protect their privacy and safety just as MVPDs are required to do?

We ask that, prior to the issuance of or a vote on any Notice of Proposed Rulemaking on these issues, your office provides us with written responses to these questions. Thank you for your attention to these critical matters. Please contact [Jennifer.Choudhry@mail.house.gov](mailto:Jennifer.Choudhry@mail.house.gov) (Collins) or [Linda.Shim@mail.house.gov](mailto:Linda.Shim@mail.house.gov) (Chu) if you have any further questions.

Sincerely,



Doug Collins  
Member of Congress



Judy Chu  
Member of Congress



Lamar Smith  
Member of Congress



Adam Schiff  
Member of Congress



Mimi Walters  
Member of Congress



FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

April 19, 2016

The Honorable Judy Chu  
U.S. House of Representatives  
2423 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congresswoman Chu:

Thank you for your letter regarding the recent Notice of Proposed Rule Making (NPRM) seeking comment on how to better foster competition in the set-top box marketplace and Section 629 of the Communications Act. Your views are very important and will be considered as part of the Commission's review.

I share your admiration for today's television landscape. There is an abundance of rich content and new technology. As you point out, technology is paving the way for software and apps to help consumers. Consumers deserve a variety of choices to view the programming they want, when they want and on the device they want. More choices often drive down consumer costs and drive up innovation.

The issue before the Commission is how to satisfy Section 629 in a world of evolving technology. I agree with you that any rules we adopt must reflect marketplace realities, and I assure you that is a paramount concern as we consider how to meet the statutory obligation.

At the February 18<sup>th</sup> Commission meeting, we adopted a NPRM to fulfill the statutory requirement of competitive choice for consumers. Like all NPRMs, this action opens a fact-finding dialog to build a record upon which to base any final decision. To the extent that parties have concerns about any of the proposals in the NPRM they should submit specific recommendations for solutions or adjustments into the record.

The new proposed rules would create a framework for providing device manufacturers, software developers and others the information they need to introduce innovative new technologies, while at the same time maintaining strong security, copyright and consumer protections. Nothing in this proposal changes a company's ability to package and price its programming to its subscribers, or requires consumers to purchase new boxes.

The Commission's proposal ensures the security of content by looking to industry-standard practices. Specifically, the proposal would require third party device and app developers to meet "robustness" requirements, which dictate how resistant a device must be to various forms of hacking, that are set by the content holders, pay-TV providers, and content protection system makers themselves. In addition, the proposal would require third party devices and apps to honor entitlement information, such as whether a subscriber is entitled to



access content (e.g., premium channels) and how the subscriber is entitled to use that content (e.g., by recording it or watching it on a mobile device), established by the terms of the subscriber's pay-TV subscription package. This content security proposal, which was informed by the congressionally-mandated report drafted by the technical experts on Downloadable Security Technology Advisory Committee, will ensure that all content, including independent, minority-focused, and religious programming, is sufficiently secure to prevent theft and misuse.

With respect to your concerns about malware and cybersecurity, the NPRM ask commenters to address other aspects of security related to this proceeding and we welcome comment on this topic.

I also share your goal of ensuring this proposal does not adversely affect independent, minority-focused, and religious programming networks. The proposal would facilitate competition in interfaces, search functions, and integration of programming sources, all of which would provide customers with a greater ability to access independent, minority-focused, and religious programming. With regard to your concerns on channel-placement, the proposal notes that there is no evidence of change in channel-positioning under the current CableCARD regime, even though nothing in our rules prevents third-party device manufacturers, such as TiVo, from making such changes today. However, to ensure we build a complete record, the NPRM invites comment on this issue. Our goal is to maintain the opportunity for those content providers currently carried by Pay-TV providers, and create new opportunities for those independent programmers that cannot reach Pay-TV consumers because they have been locked out of the system.

You express concerns that rules intended to achieve Section 629's mandate could diminish the viewing experience and the economic underpinnings that support investment in innovative content. The Commission's proposal preserves copyright protections and the NPRM seeks comment on whether and how we should take further actions to address the concerns you raise. For instance, the item asks numerous questions about how to protect the rights and negotiated agreements of content owners. The item also specifically states that "our regulations must ensure that Navigation Devices...cannot technically disrupt, impede or impair the delivery of services to an MVPD subscriber." In this vein, the items asks a number of questions related to advertising and copyright concerns raised by content owners.

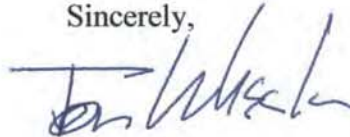
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I believe the Commission's proposal will lead to innovation that will improve consumer choice and options for content providers. As we develop a record and explore fulfilling the statutory mandate, I look forward to continuing to work with you on this important consumer issue.

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Tom Wheeler





FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

OFFICE OF  
THE CHAIRMAN

April 19, 2016

The Honorable Doug Collins  
U.S. House of Representatives  
1504 Longworth House Office Building  
Washington, D.C. 20515

Dear Congressman Collins:

Thank you for your letter regarding the recent Notice of Proposed Rule Making (NPRM) seeking comment on how to better foster competition in the set-top box marketplace and Section 629 of the Communications Act. Your views are very important and will be considered as part of the Commission's review.

I share your admiration for today's television landscape. There is an abundance of rich content and new technology. As you point out, technology is paving the way for software and apps to help consumers. Consumers deserve a variety of choices to view the programming they want, when they want and on the device they want. More choices often drive down consumer costs and drive up innovation.

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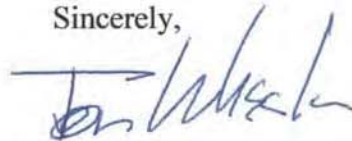


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I believe the Commission's proposal will lead to innovation that will improve consumer choice and options for content providers. As we develop a record and explore fulfilling the statutory mandate, I look forward to continuing to work with you on this important consumer issue.

Sincerely,

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Tom Wheeler



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

April 19, 2016

The Honorable Adam B. Schiff  
U.S. House of Representatives  
2411 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Schiff:

Thank you for your letter regarding the recent Notice of Proposed Rule Making (NPRM) seeking comment on how to better foster competition in the set-top box marketplace and Section 629 of the Communications Act. Your views are very important and will be considered as part of the Commission's review.

I share your admiration for today's television landscape. There is an abundance of rich content and new technology. As you point out, technology is paving the way for software and apps to help consumers. Consumers deserve a variety of choices to view the programming they want, when they want and on the device they want. More choices often drive down consumer costs and drive up innovation.

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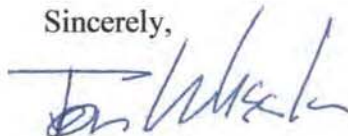


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Tom Wheeler



OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

April 19, 2016

The Honorable Lamar Smith  
U.S. House of Representatives  
2409 Rayburn House Office Building  
Washington, D.C. 20515

Dear Congressman Smith:

Thank you for your letter regarding the recent Notice of Proposed Rule Making (NPRM) seeking comment on how to better foster competition in the set-top box marketplace and Section 629 of the Communications Act. Your views are very important and will be considered as part of the Commission's review.

I share your admiration for today's television landscape. There is an abundance of rich content and new technology. As you point out, technology is paving the way for software and apps to help consumers. Consumers deserve a variety of choices to view the programming they want, when they want and on the device they want. More choices often drive down consumer costs and drive up innovation.

The issue before the Commission is how to satisfy Section 629 in a world of evolving technology. I agree with you that any rules we adopt must reflect marketplace realities, and I assure you that is a paramount concern as we consider how to meet the statutory obligation.

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With respect to your concerns about malware and cybersecurity, the NPRM ask commenters to address other aspects of security related to this proceeding and we welcome comment on this topic.

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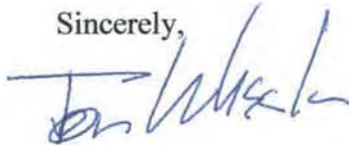


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OFFICE OF  
THE CHAIRMAN

FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON

April 19, 2016

The Honorable Mimi Walters  
U.S. House of Representatives  
236 Cannon House Office Building  
Washington, D.C. 20515

Dear Congresswoman Walters:

Thank you for your letter regarding the recent Notice of Proposed Rule Making (NPRM) seeking comment on how to better foster competition in the set-top box marketplace and Section 629 of the Communications Act. Your views are very important and will be considered as part of the Commission's review.

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You also note the importance of privacy protections for consumers under the new framework. Let me assure you that the proposal we adopted seeks to ensure that the privacy protections that exist today will also apply to alternative navigation devices and applications. Today, pay-TV providers abide by privacy obligations under Sections 631 and 338 of the Communications Act. These privacy obligations, among other things, prohibit pay-TV providers from disclosing to other companies for advertising purposes personally identifiable information concerning any subscriber, including data about a subscriber's viewing habits, without the subscriber's prior written or electronic consent. The proposal tentatively concludes that third-

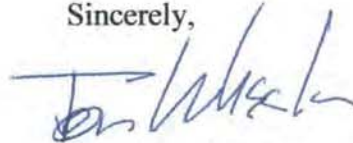


party device manufacturers must afford consumers the same level of protection. Specifically, the proposal tentatively concludes that manufacturers must certify they are in compliance with the same privacy obligations as pay-TV providers. The proposal asks a number of questions about how best to enforce such a requirement, including whether an independent entity should validate third-party manufacturer's certifications, whether the Commission should maintain the certifications, and what the appropriate enforcement mechanism should be if there are any lapses in compliance with any certification.

Additionally, the NPRM notes that today, competitive navigation devices such as TiVo must comply with a host of state and federal privacy protections that include various remedies for consumers. All of these protections and remedies would continue to apply under the proposal in the NPRM.

I believe the Commission's proposal will lead to innovation that will improve consumer choice and options for content providers. As we develop a record and explore fulfilling the statutory mandate, I look forward to continuing to work with you on this important consumer issue.

Sincerely,

A handwritten signature in blue ink, appearing to read "Tom Wheeler", with a stylized, cursive script.

Tom Wheeler